IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs October 30, 2007

# STATE OF TENNESSEE v. RICKY SHANE STANLEY

**Appeal from the Circuit Court for Monroe County**
**No. 01-254 Carroll L. Ross, Judge**

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**No. E2007-00352-CCA-R3-CD - Filed February 15, 2008**

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In 2005, while on probation, the defendant was arrested for possession of a weapon, possession of a Schedule II drug, driving on a revoked license, and two counts of aggravated burglary. Following these arrests, a probation revocation warrant was issued for the defendant. In February 2006, the defendant was determined to be incompetent to stand trial on the charges resulting from his arrests. In January 2007, the Monroe County Circuit Court held a probation revocation hearing and, despite the previous determination that the defendant was incompetent to stand trial, revoked the defendant's probation. The defendant appeals, arguing that the trial court erred in revoking his probation while he was incompetent to stand trial. After reviewing the record, we conclude that the trial court's revocation of the defendant's probation violated his due process rights under the state and federal constitutions. Therefore, we reverse the judgment of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Reversed**

D. KELLY THOMAS, JR., J., delivered the opinion of the court, in which DAVID H. WELLES and DAVID G. HAYES, JJ., joined.

C. Richard Hughes, District Public Defender; William C. Donaldson, Assistant District Public Defender, for the appellant, Ricky Shane Stanley.

Robert E. Cooper, Jr., Attorney General and Reporter; David H. Findley, Assistant Attorney General; Steven Bebb, District Attorney General; James H. Stutts, Assistant District Attorney General, for the appellee, State of Tennessee.

## OPINION

The record reflects that in November 2001, a Monroe County grand jury indicted the defendant on one count of aggravated burglary and seven counts of burglary of an automobile. In

March 2002, the defendant pled guilty to one count of aggravated burglary and two counts of automobile burglary. The trial court sentenced the defendant to an effective sentence of four years as a Range I, standard offender, with the defendant to serve four months in the local jail and the remainder of his sentence on probation. In May 2002, the parties agreed to release the defendant from jail due to medical problems he was experiencing at the time.

In December 2002, a probation revocation warrant was issued against the defendant based on new charges of theft under $500 and vandalism. The defendant pled guilty to the probation violation in January 2003, at which point his probation was revoked and he was placed on intensive probation. In February 2004, after the defendant completed the conditions of intensive probation, he was returned to regular probation.

On March 28, 2005, a probation revocation warrant was issued based on new charges of manufacturing methamphetamine and possession of the drug with intent to manufacture it. The warrant alleged that the defendant failed to inform the probation officer of these new charges, and that he also failed to abstain from the use or possession of illegal drugs. On April 18, 2005, after a hearing, the state moved to dismiss the violation of probation, and the trial court granted the motion.

On May 5, 2005, the defendant was arrested for possession of a weapon, possession of a Schedule II drug, driving on a revoked license, and two counts of aggravated burglary. On May 10, the Monroe County General Sessions Court ordered that the defendant be evaluated concerning his competency to stand trial on these alleged offenses, as well as his mental state at the time of the offenses. On May 16, a probation revocation warrant was issued in light of the defendant's arrest.

In June 2005, the defendant was examined by Cherokee Health Systems in Knoxville. Cherokee then referred the defendant to the Division of Mental Retardation (DMR), which completed its evaluation in February 2006. According to a letter sent to the trial court by Cherokee on February 8, 2006,[1] the DMR examiners concluded that the defendant

> does not have the capacity to defend himself in a court of law. They further determined that [the defendant] is vaguely aware of the charges against him, does not understand the serious nature of the charges filed against him, or the potential consequences if found guilty in a court of law. The evaluators also concluded that [the defendant] does not understand the criminal justice system to participate in his own defense.

The Cherokee letter also noted that the DMR evaluators concluded that the defendant had an IQ of 67, placing him "in the Mildly Mentally Retarded Range," and that he would not benefit from competency to stand trial training. The evaluators also concluded that at the time the defendant committed the offenses, he was able to appreciate the nature and wrongfulness of his actions.

[1] No independent report by DMR regarding the defendant's competency to stand trial appears in the record.

Therefore, an insanity defense could not be used in the defendant's trial.

In April 2006, the state filed a motion that the defendant be held in custody until he was determined competent to stand trial. Although it is unclear from the record whether the trial court granted that motion, the record does support a reasonable inference that the defendant was in fact held at the Monroe County Jail from that point until the date of his probation revocation hearing. On September 28, 2006, Bill Stanley, a Licensed Senior Psychological Examiner with DMR, wrote a letter to the trial court indicating that the defendant could receive competency to stand trial training in the county jail prior to his application to receive DMR services being processed and a group home placement secured. In light of this correspondence, on September 29 the trial court ordered that the defendant's competency training commence "immediately." No additional information concerning this training, the defendant's progress in acquiring DMR services, or the defendant's competency to stand trial at the time of his probation revocation hearing appears in the record.

The defendant's probation revocation hearing was held on January 22, 2007. At that hearing, Danny Isbill, the defendant's probation officer, testified that the defendant had violated his probation on four grounds: his most recent arrests, his failure to report those arrests to his probation officer, his possession of a firearm, and his failure to avoid using intoxicants of any kind. Isbill stated that the defendant had been a "model probationer" until his arrests in March and May 2005. On cross-examination, Isbill testified that he was aware that the defendant had been declared incompetent to stand trial.

The defendant then testified, with the substance of his testimony as follows:

Q[By defense counsel]: State your name, please
A[By the defendant]: Ricky Stanley
Q: How long have you been in jail? Do you know? You're going to have to tell the Judge.
THE COURT: You'll have to talk to me, Mr. Stanley. How long have you been in jail?
A: I don't know. I don't know.
Q: While you've been at the jail, have you met with an individual by the name of Bill Stanley?
A: People.
Q: People? Have you been to Green Valley Mental Health Institute? You're going to have to tell the Judge.
A: I don't know.
Q: Okay. Do you have any idea—did you meet with a black man that talked to you about the Department of Mental Retardation? You're going to have to say yes or no.
A: You.
Q: With me? Okay. Do you know what—
A: Seem like you came and . . .
Q: Uh-huh (affirmative). Do you know what Mr. Stanley and the other individual,

do you know what they were trying to do for you?
A: (No audible response)
Q: Do you remember being on probation with Mr. Isbill? When you were on—
A: Yeah.
Q: When you were on probation with Mr. Isbill, did anybody help you so that you could make it on probation?
A: Mama.
Q: Who did?
A: Mama.
Q: Okay. Your mother has passed away, is that correct?
A: Yeah.
Q: Are you able to make it on probation without your mother?
A: No.
Q: Okay. Do you know anything about the other charges that Mr. Isbill is talking to you about?
A: (Indiscernible response)
Q: You do know about them?
A: Yeah, I know, I don't know (indiscernible).
Q: What do I mean? Is that what you're saying?
A: (No audible response)

After the defendant testified, counsel for the defendant asked the trial court to "take judicial notice of all the witnesses that have testified . . . about competency training." Defense counsel said that competency to stand trial training had not started prior to this hearing, and that Bill Stanley, the DMR evaluator, had said that DMR "would not start the competency training until [the defendant was out of jail. We tried to get him into the Department of Mental Retardation. He's twice been turned down."[2] The trial court, admitting that it was in a "catch 22 where there's no doubt [that the defendant was] in violation of the terms of his probation," but expressing concern that the defendant had been declared incompetent to stand trial but was getting no mental health treatment in the county jail, revoked the defendant's probationary sentence and remanded him to the Department of Correction because "[m]aybe they have programs there or they might be in a little better position there to let him get whatever training he needs." This appeal follows.

## ANALYSIS

On appeal, the defendant asserts that the trial court erred by revoking his probation after he had been declared incompetent to stand trial. We agree.

A trial court may revoke a sentence of probation upon finding by a preponderance of the evidence that the defendant has violated the conditions of his release. Tenn. Code Ann. § 40-35-311(e). A trial court is not required to find that a violation of probation occurred beyond a

[2] No documentation regarding any attempts to procure DMR services for the defendant appears in the record.

reasonable doubt. Stamps v. State, 614 S.W.2d 71, 73 (Tenn. Crim. App. 1980). The evidence need only show that the court has exercised conscientious judgment in making the decision and has not acted arbitrarily. Id. Our standard of review on appeal is whether the trial court abused its discretion in finding that a violation of probation occurred. State v. Mitchell, 810 S.W.2d 733, 735 (Tenn. Crim. App. 1991). In order to conclude that the trial court abused its discretion, there must be no substantial evidence to support the determination of the trial court. State v. Harkins, 811 S.W.2d 79, 82 (Tenn. 1991). Such a finding "'reflects that the trial court's logic and reasoning was improper when viewed in light of the factual circumstances and relevant legal principles involved in a particular case.'" State v. Shaffer, 45 S.W.3d 553, 555 (Tenn. 2001) (quoting State v. Moore, 6 S.W.3d 235, 242 (Tenn. 1999)).

This court has observed that "[i]t is a fundamental principle of our system of criminal justice that one who is charged with a crime cannot be required to plead to the offense, be put to trial, convicted, or sentenced while insane or otherwise mentally incompetent." Berndt v. State, 733 S.W.2d 119, 121 (Tenn. Crim. App. 1987) (citations omitted); see Pate v. Robinson, 383 U.S. 375, 378, 86 S. Ct. 836, 838 (1966). "[A] person whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subjected to a trial." Drope v. Missouri, 420 U.S. 162, 171, 95 S. Ct. 896, 903 (1975); see Mackey v. State, 537 S.W.2d 704, 707 (Tenn. Crim. App. 1975). The Supreme Court has "repeatedly and consistently recognized that 'the criminal trial of an incompetent defendant violates due process.'" Cooper v. Oklahoma, 517 U.S. 348, 354, 116 S. Ct. 1373, 1376 (1996) (quoting Medina v. California, 505 U.S. 437, 453, 112 S. Ct. 2572, 2581 (1992) and citing Drope, 420 U.S. 171-72; Pate, 383 U.S. at 378). "Such a conviction also violates Article 1, Section 8 of the Tennessee Constitution." Berndt, 733 S.W.2d at 122.

A probation revocation is not a stage of a criminal prosecution, though it does result in a loss of liberty. Gagnon v. Scarpelli, 411 U.S. 778, 782, 93 S. Ct. 1756, 1759-60 (1973). While a defendant who has been granted probation has only a conditional liberty interest, that conditional interest "must be protected by due process." State v. Merriweather, 34 S.W.3d 881, 884 (Tenn. Crim. App. 2000) (citations omitted); see Scarpelli, 411 U.S. at 781-82; Morrissey v. Brewer, 408 U.S. 471, 481-89, 92 S. Ct. 2593-2600-04 (1972). Accordingly, a defendant facing the revocation of probation is entitled to the "minimum requirements of due process," which the Supreme Court in Scarpelli and Morrissey identified as including: (1) written notice of the claimed violation(s) of probation; (2) disclosure to the probationer of evidence against him; (3) the opportunity to be heard in person and to present witnesses and documentary evidence; (4) the right to confront and cross-examine adverse witnesses (unless good cause is shown for not allowing confrontation); (5) a neutral and detached hearing body, members of which need not be judicial officers or lawyers; and (6) a written statement by the factfinder regarding the evidence relied upon and the reasons for revoking probation. Scarpelli, 411 U.S. at 786, Morrissey, 408 U.S. at 489.

Such fundamental rights, however, "would be meaningless to an incompetent probationer." Harrison v. State, 905 So. 2d 858, 860 (Ala. Crim. App. 2005). As the Wisconsin Supreme Court stated,

> Notice and hearing are meaningless guarantees to a probationer who is incompetent and as such unable to understand the notice of the claimed violations of probation, the evidence against him . . . or the written statement by the fact finder as to the evidence relied on and the reasons for revoking probation. Nor can an incompetent probationer present witnesses and documentary evidence, confront and cross-examine adverse witnesses, dispute the accusation of violation of the conditions of probation, explain mitigating factors, or argue the appropriateness of revocation.
>
> The core of the process due at a probation revocation proceeding, the opportunity for a meaningful hearing on the facts of the alleged violation and the appropriate disposition of the probationer, is not available to an incompetent probationer.

State ex rel. Vanderbeke v. Endicott, 563 N.W.2d 883, 887-88 (Wis. 1997). The conclusion that revoking a mentally incompetent defendant's probation would violate his due process rights has been reached by courts in other states. See Harrison, 905 So. 2d at 861; People v. Martin, 232 N.W.2d 191, 194 (Mich. Ct. App. 1975); State ex rel. Juergens v. Cundiff, 939 S.W.2d 381, 382-83 (Mo. 1997); State v. Qualls, 552 N.E.2d 957, 960 (Ohio Ct. App. 1988); Thompson v. State, 654 S.W.2d 26, 28 (Tex. Crim. App. 1983). This conclusion is also consistent with one made by this court in a similar case. See State v. Robert Bucky Baker, No. 01-C01-9210-CR-00307, 1993 WL 48861, at **2-3 (Tenn. Crim. App. at Nashville, Feb. 25, 1993) (trial court erred by revoking community corrections sentence, before determination of competency could be made, of defendant with history of mental illness).

In this case, the February 2006 mental health evaluation, which concluded that the defendant was incompetent to stand trial, coupled with his testimony at the probation revocation hearing, should have led the trial court to question the defendant's capacity to exercise the rights afforded him in a probation revocation hearing as outlined in Scarpelli and Morrissey. In fact, the trial court entered an order on September 29, 2006, directing competency training while the defendant was incarcerated and setting a competency review for December 11, 2006. The record does not reflect whether the competency review took place. Subjecting a mentally incompetent defendant to the revocation hearing without the ability to exercise those rights would constitute a violation of the defendant's constitutional right to due process and an abuse of discretion by the trial court. Therefore, we must reverse the trial court's order revoking the defendant's probation and direct the trial court to conduct a hearing to determine the defendant's present competency, ordering an updated evaluation of the defendant if appropriate.

## CONCLUSION

In consideration of the foregoing and the record as a whole, the judgment of the trial court is reversed. Should the defendant be declared competent to stand trial, the trial court may proceed

with a probation revocation hearing.

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D. KELLY THOMAS, JR., JUDGE